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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047433
Party	Defendant Jay-Y Enterprise Co., Inc.
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Signature	/Kenneth L. Wilton/
Date	12/23/2008
Attachments	Opposition to Request for a Suspension.pdf (8 pages)(68670 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GADO S.A.R.L.,

Petitioner,

v.

JAY-Y ENTERPRISE CO., INC.,

Respondent.

Cancellation No. 92047433

**RESPONDENT’S OPPOSITION TO PETITIONER’S REQUEST FOR A SUSPENSION
OR, IN THE ALTERNATIVE, FOR EXTENSIONS OF TIME**

Respondent Jay-Y Enterprise Co., Inc. (“Respondent”) hereby opposes the Request for a Suspension or, in the Alternative, for Extensions of Time filed by Petitioner Gado S.A.R.L (“Petitioner”) as follows:

Petitioner, in its cursory “Request,” fails to demonstrate that good cause supports its request for either a suspension of these proceedings or an extension of the trial testimony deadlines. *See, e.g., Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999) (sparse motion contained insufficient facts on which to find good cause).

With regard to the suspension, Petitioner asserts simply that the parties are engaged in good faith settlement negotiations and that it sent a draft Settlement Agreement to Respondent on December 3, 2008. (Request, p. 2.) What Petitioner does not mention is that Respondent had raised issues related to the proposed agreement in *September, 2008*, and that Petitioner only got around to responding to those questions when it realized both that its trial testimony period was about to open, and that it had to make some sort of showing of diligence to support its motion to suspend. (Wilton Decl. ¶ 2.) Petitioner’s excuses for its lack of diligence – that it is located

overseas and is represented by three sets of counsel (two in the United States and one in Italy) – are issues of its own creation. It is the plaintiff in these proceedings, and its excuses certainly do not justify its delay in prosecuting them. Because Petitioner has failed to demonstrate that it has acted diligently to resolve this matter, its request for a suspension should be denied. *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000)(mere existence of settlement negotiations or proposals, without more, would not justify delay in proceeding with testimony).

In the alternative, Petitioner requests that the trial testimony periods be adjourned for sixty days. (Request, p. 3.) The sole basis Petitioner presents to support its extension request is that “there has been insufficient time for Gado to review evidence in the possession of Jay-Y in light of the ongoing settlement negotiations.” (*Id.*) This statement is misleading.

The evidence to which Petitioner is referring consists of thirty boxes of documents produced by Respondent last year that Petitioner chose not to review. Specifically, on November 30, 2007, Respondent acknowledged Petitioner’s first settlement offer, but stated further that it was producing thirty boxes of documents and that those materials would be available for inspection and copying through the end of 2007. (Wilton Decl. ¶ 3, Exh. 1.) Petitioner made no attempt to review that evidence.

Petitioner therefore was well aware that, although Respondent was considering settlement, it also considered the proceedings to be continuing. Discovery closed on November 13, 2007. This Request, however, was not filed until over one year later and the day before Petitioner’s Trial Testimony Period opened. Petitioner chose not to inspect Respondent’s documents when it had the opportunity; it should not be allowed to use its own failure as an excuse for extending the trial deadlines in this proceeding.

CONCLUSION

Petitioner, being represented here by two sets of competent counsel, has been well aware of the impending trial testimony deadlines, yet it waited almost three months before responding to Respondent's questions regarding the latest settlement proposal. While Respondent continues to believe that this matter can and should be resolved informally, and will continue to negotiate in good faith, it also believes that the matter should not be allowed to drag on indefinitely. Petitioner has failed to present good cause for its requested suspension or extension, and its request for same should be denied.

SEYFARTH SHAW LLP

Dated: December 23, 2008

By: /s/ Kenneth L. Wilton
Kenneth L. Wilton
Attorneys for Respondent
JAY-Y ENTERPRISE CO., INC.

2029 Century Park East, Suite 3300
Los Angeles, CA 90067-3063
Telephone: (310) 277-7200
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DECLARATION OF KENNETH L. WILTON

I, Kenneth L. Wilton, declare as follows:

1. I am a member of the bar of the State of California, and am a member of the firm of Seyfarth Shaw LLP, counsel of record for respondent Jay-Y Enterprise Co., Inc.

("Respondent") in this proceeding. I make this declaration on the basis of my own personal knowledge and in support of Respondent's opposition to petitioner Gado S.A.R.L.'s request for a suspension or, in the alternative, for extensions of time.

2. On August 29, 2008, Petitioner's counsel sent to my office documents that purported to be revisions to a previously-exchanged settlement agreement. On September 15, 2008, I sent an e-mail to Petitioner's counsel asking for clarification of several issues, including the bases for the proposed changes to the then-current agreement. On September 16, 2008, I received an e-mail from Petitioner's counsel in which he promised to speak with his client regarding the issues. On November 5, 2008, Petitioner's counsel sent me an e-mail asking, in part, "Where are we on this." After being reminded that we were waiting for Petitioner to respond to my September correspondence, and after Respondent refused to stipulate to a further suspension of these proceedings, it was not until December 3, 2008, that I received a revised version of the settlement agreement.

3. On November 30, 2007, I sent a letter to Petitioner's counsel acknowledging Petitioner's initial settlement proposal, but stating that Respondent was producing 30 boxes of documents and that they would be available in my office for inspection and copying through the end of 2007. Petitioner never attempted to review those documents. A true and correct copy of my November 30, 2007 letter is attached hereto as Exhibit 1.

Executed this 23rd day of December, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ *Kenneth L. Wilton*
KENNETH L. WILTON

EXHIBIT 1

Writer's direct phone

(310) 201-5246

Writer's e-mail

jjacobs@seyfarth.com

Writer's direct fax

(310) 282-6946

November 30, 2007

VIA FIRST CLASS MAIL

Robert S. Pierce, Esq.
John Clarke Holman, Esq.
Jacobson Holman PLLC
400 7th St., NW
Washington, DC 20004

Re: *Gado S.A.R.L. v. Jay-Y Enterprise Co., Inc.*, Cancellation No. 92047433

Dear Messrs. Pierce and Holman:

Thank you for your November 29, 2007 settlement offer. We are discussing it with our client and will be in touch shortly. In the meantime, enclosed are Jay-Y Enterprise's written responses to Gado's first sets of interrogatories and requests for production of documents. Our client has thirty boxes of responsive documents. The boxes are currently in our office and will be through the end of the year. Please let us know when you would like to come and review the documents so that we may make appropriate arrangements.

Very truly yours,

SEYFARTH SHAW LLP

Original Signed

Jill A. Jacobs

JAJ:jj

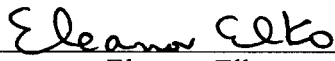
Enclosures

cc: Jay-Y Enterprise Co., Inc. (w/o enclosures)

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2008, I served the foregoing RESPONDENT'S
OPPOSITION TO PETITIONER'S REQUEST FOR A SUSPENSION OR, IN THE
ALTERNATIVE, FOR EXTENSIONS OF TIME on the Petitioner by depositing a true copy
thereof in a sealed envelope, postage prepaid, in First Class U.S. mail addressed to Petitioner's
counsel as follows:

John Clarke Holman, Esq.
Robert S. Pierce, Esq.
JACOBSON HOLMAN, PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Eleanor Elko